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October 22, 1996

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
Room 222, 1919 M Street, N.W.
MS 1170
Washington, D.C. 20554

RE: Implementation of Local Competition Provisions of the Telecommunications Act of 1996; CC Docket No. 96-98

Dear Mr. Caton:

The Iowa Utilities Board ("IUB") takes this opportunity to update the Federal Communications Commission ("FCC") of recent actions taken in Iowa to implement telecommunications competition. Like the FCC, the IUB is deeply committed to implementing each of the elements of the landmark Telecommunications Act of 1996 ("1996 Act") to improve the country's economic success, increase job growth and encourage investment prospects through pro-competitive telecommunications reforms.

On October 18, 1996, the IUB issued the enclosed Preliminary Arbitration Decision ("Decision") that addressed local access prices, terms and conditions to permit AT&T Communications of the Midwest, Inc. ("AT&T") and MCI Metro Access Transmission Services, Inc. ("MCI") to connect with U S West Communications, Inc. ("U S West"). The IUB had required each of these parties to submit its "last-best offer" to resolve the local access interconnection issues that were being arbitrated. After carefully reviewing all of the evidence provided, the IUB generally selected the terms of the last-best offer proposed by AT&T, including its pricing methodology, as the basis for both long-distance carriers to interconnect with U S West. However, the IUB modified some provisions of AT&T's proposal in order to comply with the 1996 Act and Iowa's pro-competitive telecommunications statute.[1] The Decision is one more important step that the IUB has taken to promote local competition in Iowa by providing the necessary guidance to all

[1] See, 1995 Iowa Acts, House File 518 (codified at Iowa Code § 476.95, *et seq.*).

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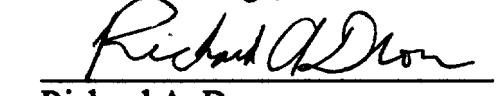
parties so that they can move forward and realize the goal of effective competition at the local level.

The IUB remains committed to working with the FCC to comply with the requirements of the 1996 Act to restructure the telecommunications industry. That is why, for example, the IUB submitted written comments on May 15, July 18, and July 24, 1996 concerning the need for flexibility in the design of the FCC's pricing provisions, well before the FCC issued the August 8, 1996 order in the captioned proceeding ("First Order"). Although the FCC appeared to take note of the IUB's concerns[2], it selected a different approach to this critical issue in the First Order. Recent comments by the FCC questioning the IUB's dedication toward competition have demonstrated, unfortunately, that any request for waiver of the FCC's pricing mandates would have been a futile exercise. As a result, the IUB was compelled to seek appellate review of the First Order.

Despite the different approaches taken by the FCC and the IUB to achieve meaningful competition, the IUB continues to believe that both agencies are attempting to work in good faith to achieve common and critically important objectives. The IUB affirms its willingness to continue to coordinate its activities with the FCC and is optimistic that the FCC will maintain a healthy dialogue with respect to all of these issues.

Sincerely,

Allan T. Thoms, Chairperson
Nancy S. Boyd, Board Member
Emmit J. George, Board Member



Richard A. Drom
Counsel for the Iowa Utilities Board

Enclosure

cc: FCC Commissioners
International Transcription Service
Common Carrier Bureau
Iowa Congressional Delegation
Telecommunication Media Contacts

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[2]See, e.g., First Order, ¶ 109-120.

STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE ARBITRATION OF: AT&T COMMUNICATIONS OF THE MIDWEST, INC., and MCI METRO ACCESS TRANSMISSION SERVICES, INC., Petitioning Parties, and U S WEST COMMUNICATIONS, INC., Responding Party.	DOCKET NOS. ARB-96-1 ARB-96-2

PRELIMINARY ARBITRATION DECISION

(Issued October 18, 1996)

PROCEDURAL HISTORY

These arbitrations come before the Utilities Board (Board) pursuant to § 252(b) of the Telecommunications Act of 1996 (Act) and IOWA ADMIN. CODE 199-38.7(3) (1996). The proceedings were initiated by petitions filed by AT&T Communications of the Midwest, Inc. (AT&T), on July 26, 1996, and by MCI Metro Access Transmission Services, Inc. (MCI), on August 9, 1996. The responding party in each case is U S West Communications, Inc. (U S West). The cases, which

raise many of the same issues, were consolidated by the Board in an order issued August 14, 1996.

The purpose of these arbitrations is for the Board to resolve the issues set forth in the petitions and responses. 47 U.S.C. § 252(b)(4)(C). Under the Telecommunications Act of 1996 (the Act), the Board shall ensure that its arbitration decision meets the requirements of § 251 and any valid Federal Communications Commission (FCC) regulations pursuant to § 251; establishes rates according to the provisions in 47 U.S.C. § 252(d) for interconnection, services, or network elements; and provides a schedule for implementation of the terms and conditions by the parties to the agreement. 47 U.S.C. § 252(c).

The Board announced in its order setting procedural schedule, issued August 30, 1996, and its order modifying the procedural schedule, issued September 13, 1996, that the cases would be arbitrated by choosing the last-best proposed offers in the consolidated cases. The parties filed last-best proposed offers on September 19, 1996. A hearing was held September 25-27, 1996, and the parties each filed a post-hearing brief.

DISCUSSION

1. The Framework for the Arbitration Decisions

It appears as a result of external forces, the parties did little hard negotiating on Iowa-specific terms until after they filed for arbitration. While the Board

appreciates the movement on important issues that is evident in the last-best proposed offers as well as the movement that occurred during the arbitration hearing itself, in the Board's opinion, none of the agreements submitted to the Board would produce even the minimal level of mutual acceptance that would be necessary for local competition to begin. The positions of the parties reflected in their last-best proposed offers have not sufficiently narrowed the differences on key issues to give the Board much hope the parties could constructively proceed to implement any of the proposed agreements as they were submitted. The Board is, however, determined to provide a framework that will allow the transition to competition to continue, even if the parties are reluctant to establish that framework themselves.

The decision to utilize last-best proposed offers as a procedural tool in these arbitrations does not absolve either the Board from its duty, under both state and federal law, to continue to foster competition, or the parties from their respective duties under those same laws. As a result, the Board concludes that it must modify any agreement it chooses to comply with the requirements of state and federal law. To be in compliance, the agreement that is the end product of this arbitration must include rates, terms, and conditions that are just, reasonable, and nondiscriminatory and fair to both new competitors and incumbent local exchange carriers.

The Board also believes it is reasonable, given the time pressures of seeking to move the industry into a competitive framework, and the common stance of U S West as the incumbent local exchange provider to both competitors before the Board in this proceeding, that the same initial terms should apply to govern the relationship between AT&T and U S West, as well as between MCI and U S West.

2. Determination of Rates

The Board believes the disputes over rates are the issues in these arbitrations most critical to fostering a fair and open competitive framework. Although the proposed rates vary greatly, each company claims its rates are consistent with applicable law. The Board finds the rates proposed by AT&T, which were stated to be also acceptable to MCI (Tr. 314, 333), are the most credible in these proceedings. They are supported by cost studies using a model that is publicly available and can be verified. (Tr. 256-69). This cannot be said about the U S West cost studies. (Tr. 705-08). Additionally, the Board was not persuaded by U S West that the allocations contained in its cost studies as described by U S West had reasonable basis.

Based on the record in these arbitrations, the Board accepts the AT&T cost study. It remains an open question, however, whether this record includes the best available information to measure U S West's costs for rate-setting purposes.

An exception to the Board's selection of the AT&T rates is the wholesale discount. The Board believes the methodology used by MCI appears, upon our preliminary review, to be more compliant with § 252(d)(3) of the Act, than the approach used by U S West. In choosing the MCI proposed discount, the Board believes the more conservative assumptions incorporated into the MCI avoided cost studies produce a closer measurement of the actual costs U S West can avoid in providing service to resellers.

3. Details of Unbundling

The Board believes that the level of unbundling contained in the AT&T proposed agreement is reasonable and feasible at this time. The sub-loop unbundling proposed by MCI appears not to be necessary at this point in the competitive transition, and instead raises questions about pricing and technical network reliability that can better be addressed as the parties gain more experience in working together. The negotiation process provides the better tool to expand this highly technical unbundling, rather than being mandated by the Board on the basis of the record in this docket.

The Board finds overall, however, that the AT&T agreement is superior to the U S West agreement in the level of process-oriented detail on the components basic to a competitive transition. U S West would leave most of the specific details concerning areas such as interconnection and collocation open for further

negotiation and future resolution. In light of the failure of negotiations to date to produce much agreement on substantive issues, the Board believes the U S West approach would result in additional delay and repeated disputes.

4. The MCI Proposal

The discussion in the preceding paragraphs shows the Board's rationale for choosing the last-best proposed offer of AT&T for both arbitrations. There are few significant substantive differences between the MCI and AT&T proposed offers. Modifications are required as discussed subsequently. To the extent that MCI may believe its needs are not satisfied with the Board's selection of and modifications to the terms of the AT&T agreement, MCI can use the § 251 negotiation process to negotiate modifications of the agreement resulting from this arbitration.

MODIFICATIONS TO THE AGREEMENT

While the Board has selected the AT&T proposed offer for both arbitrations, as discussed earlier in this preliminary decision, that agreement must be conditioned by the Board to make it just, reasonable, nondiscriminatory, conforming with the positions taken by the parties during the hearings, and otherwise compliant with applicable state and federal law. As previously discussed, the wholesale discount for services for resale will not be the 25 percent discount proposed by AT&T, but rather the 21.68 percent discount proposed by MCI. (Tr. 330-31).

AT&T stated repeatedly at the hearing that where it requested facilities not in existence or where it requested service quality superior to that U S West provides to itself or its affiliates, AT&T would pay for the additional facilities or superior service. (Tr. 692, 725-26). The Board has reflected this requirement in the agreement, first, as a general operating principle and, later, at numerous places where the application of the principle appeared appropriate. The fact that the principle may not be stated in a particular section should not be construed to mean it is not intended to apply to that section.

AT&T's proposed agreement was inexplicably one-sided in some instances by placing obligations solely on U S West, where the obligations more reasonably should be mutual. Similarly, in many cases, decisions were left solely to AT&T where mutual decision making would be appropriate. The Board has therefore made changes to reflect a more balanced approach in a number of places throughout the agreement and the attachments.

The proposed agreement often states that the parties' actions must be consistent with the Act and FCC rules. In those instances, the Board requires the parties' actions to be in compliance with state law as well. Most local service competition issues remain under the jurisdiction of the Board and the agreement must recognize that fact.

Regarding alternative dispute resolution under the provisions of attachment 1, there are a number of statutory provisions available to aggrieved parties. The Board believes these should be recognized as viable dispute resolution tools to the parties. Language was added to recognize the Utilities Board's complaint procedure as an alternative dispute resolution process.

Another area of the AT&T agreement the Board modified relates to the performance credits. It is appropriate for a contract to provide for liquidated damages where damages would be difficult or impossible to quantify. It does not appear appropriate for a contract to establish extreme penalties under the guise of incentives. The level of the performance credits in the AT&T proposed agreement, particularly in the early stages of competition when competitors are likely to have a relatively small number of customers, clearly constitute penalties. The Board has adjusted the amounts of the performance credits downward so that they more accurately reflect the likely actual damages that may be incurred by AT&T. The Board has also eliminated the minutely specified service quality standards set forth by AT&T and has substituted, where appropriate, Iowa telephone quality of service rules.

IMPLEMENTATION SCHEDULE

Section 252(c)(3) of the Act requires the Board to provide a schedule of implementation of the terms and conditions by the parties to the agreement. The parties have not systematically addressed this issue in the proceedings. The

deadlines provided in the AT&T proposed agreement, as modified by Board conditions, provide the only schedule for implementation. The Board has no basis on the record in this arbitration to impose additional deadlines. The parties will therefore provide implementation schedules with their comments provided pursuant to IOWA ADMIN. CODE 199-38.7(3)"j" (1996). The Board will include a schedule for the implementation of the terms and conditions by the parties in the agreement in its final written decision.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The Utilities Board as arbitrator resolves the issues in these proceedings by choosing the last-best proposed offer filed by AT&T Communications of the Midwest, Inc., and making the same terms also applicable to the relationship between MCI and U S West. The Board has modified the AT&T agreement to make it just, reasonable, nondiscriminatory, otherwise consistent with state and federal law, and to reflect the positions taken by the parties during the hearing. The resulting interconnection agreement is attached hereto and incorporated by reference.

2. The Executive Secretary will provide the parties with an electronic copy of the agreement showing with strike-outs and underlines the Board's changes to the AT&T proposed agreement.

3. Exceptions to the Board's preliminary decision shall be filed on or before October 28, 1996, and replies to the exceptions shall be filed on or before November 4, 1996, as provided in IOWA ADMIN. CODE 199-38.7(3)"j." On or before October 28, 1996, the parties shall file a schedule for the implementation of the terms and conditions of the agreement to be used by the Board in its final written decision.

UTILITIES BOARD

ATTEST:

Executive Secretary

Dated at Des Moines, Iowa, this 18th day of October, 1996.

Attachment 1 is available in hard copy form from the Records Center or electronically via the Utilities Board's Bulletin Board, (515) 281-7674